

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5TH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Danisco USA, Inc.

201 New Century Parkway

New Century, Kansas 66031

EPA ID Nos. KSD079874863

KSD985016823

Respondent.

Proceeding under Section 3008 (a) and (g) of
the Resource Conservation and Recovery Act,
as amended, 42 U.S.C. § 6928(a) and (g).

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-07-2004-160

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about March 25, 2004, when the United States Environmental Protection Agency, Region VII ("Complainant" or "EPA") issued a Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") to Danisco USA, Inc, 201 New Century Parkway, New Century, Kansas 66031, EPA ID Nos. KSD079874863 and KSD985016823 ("Respondent" or "Facility"). Pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (hereinafter known as RCRA), Title 42 United States Code (U.S.C.), Section 6901 et seq., the Complainant sought civil penalties for alleged violations of 42 U.S.C. § 6925 and Title 28, Article 31 of the Kansas Administrative Regulations ("KAR 28-31").

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is the result of such negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Complaint.

II. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.
2. Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations set forth in the Complaint.
4. Respondent waives its right to further contest the factual allegations and legal conclusions set forth in the Complaint in this or subsequent proceedings to enforce the terms of this Consent Agreement and Final Order, and agrees not to appeal the Final Order set forth below.
5. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in EPA's Complaint.
6. Respondent and EPA agree to resolve this matter without the necessity of a formal hearing and each agree to bear their own costs and attorneys' fees.
7. Respondent agrees that, in settlement of the claims alleged in the Complaint, Respondent shall pay a civil penalty of \$80,519 as set forth in Paragraph 11 of the Final Order and Respondent shall complete the Compliance Actions set forth in Paragraph 15 of this Consent Agreement and Final Order.
8. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
9. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant's representative designated in Paragraph 16 of the Final Order provides Respondent with written notice, in accordance with Paragraph 26 of the Final Order, that all requirements hereunder have been satisfied.
10. Each signatory of this Consent Agreement and Final Order certifies that he or she is fully authorized to enter into the terms of the Consent Agreement and Final Order.

III. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

11. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of \$80,519.
12. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

The Respondent shall reference the Docket Number, RCRA-07-2004-0160, on the check. A copy of the check shall also be mailed to:

Alex Chen
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, KS 66101

13. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the rate of five percent (5%) per annum.
14. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

15. Respondent shall take the following actions within the specified time periods, and according to the terms and conditions, specified below.

- A) Respondent shall continue to submit to EPA documentation that all areas where hazardous waste containers are stored at the facility are inspected weekly in accordance with KAR 28-31-4(g)(1) referencing 40 C.F.R. § 265.174. Such documentation shall include copies of inspection logs along with a certification from a corporate official responsible for waste management at the facility that show that Respondent is in compliance with this requirement. The documentation shall be due to EPA on July 30, 2004; October 31, 2004; January 31, 2005; and April 30, 2005.
- B) Within thirty (30) days of receipt of this Order, Respondent shall submit to EPA a certification from a corporate official responsible for waste management at the facility that the Respondent submitted, or attempted to submit, a contingency plan for its facility to all local police departments, fire departments, hospitals, and/or State and local emergency response teams that may be called upon to provide emergency services, in accordance with KAR 28-31-4(g)(4) referencing 40 C.F.R. § 265.53(b).

16. Respondent shall submit all documents and other correspondence required to be submitted to EPA by this Final Order to:

Kori Kuehl
Air, RCRA & Toxics Division
U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101.

17. EPA shall submit any notices or correspondence related to this Consent Agreement and Final Order, if needed, to:

Lowell D. McAfee
Vice President Operations
Danisco USA, Inc.
201 Industrial Parkway
Industrial Airport, KS 66031

18. EPA and its authorized representatives shall have access to Respondent's facility at all reasonable times to monitor Respondent's implementation of, and compliance with, the terms of this Final Order. Nothing herein shall be construed to limit EPA's access authority under RCRA or any other law.

C. Parties Bound

19. This Final Order shall apply to and be binding upon EPA and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

D. Reservation of Rights

20. This Consent Agreement and Final Order addresses all administrative matters alleged in EPA's March 25, 2004 Complaint, Docket No. RCRA-07-2004-0160. EPA reserves the right to take any enforcement action with respect to any other violations of RCRA and its implementing regulations or any other applicable law.

21. Notwithstanding any other provision of the Consent Agreement and Final Order, EPA also reserves the right to enforce the terms of the Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed thirty-two thousand five hundred dollars (\$32,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

22. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.


23. Except as expressly provided herein, including the provisions of Section C of this Consent Agreement and Final Order, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

24. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

25. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

26. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

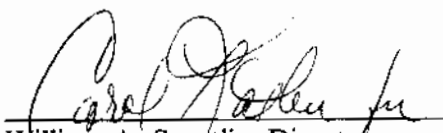
For the Respondent:


Name: _____
Printed Name: Lowell D. McAfee
Title: Vice President Operations
Date: 25 June 2004

For the Complainant:

The United States Environmental Protection Agency

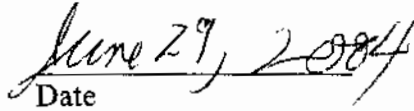

Alex Chen
Assistant Regional Counsel
Date: June 25, 2004


William A. Spratlin, Director
Air, RCRA and Toxics Division
Date: 6/28/04

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

A handwritten signature in cursive script, appearing to read "Robert Patrick", written over a horizontal line.

Robert Patrick
Regional Judicial Officer

A handwritten date "June 29, 2004" written in cursive script over a horizontal line.

Date

IN THE MATTER OF Danisco USA, Inc., Respondent
Docket No. RCRA-07-2004-0160

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Alex Chen
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

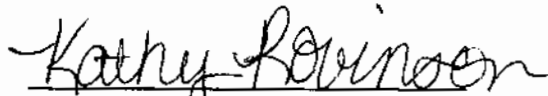
Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Lowell D. McAfee
Vice President Operations
Danisco USA, Inc.
201 Industrial Parkway
Industrial Airport, Kansas 66031

and

Terry J. Satterlee, Esq.
Jessica E. Merrigan, Esq.
Lathrop & Gage, LC
2345 Grand Blvd., Suite 2800
Kansas City, Missouri 64108

Dated: 6/29/04


Kathy Robinson
Regional Hearing Clerk